Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

No. 01-1291

IN THE SUPREME COURT OF THE UNITED STATES

CRISTINA E. GORY
Plaintiff

V.

STATE OF DELAWARE
DEPARTMENT OF CORRECTION, ET AL.
Defendants

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

PETION FOR A WRIT OF CERTIORARI

CRISTINA E. GORY
Plaintiff, Pro Se
105 Orchard Ave
Felton, DE 19943
(302) 284-4612

QUESTION PRESENTED

Whether a person who is born in the United States of America, and subject to the jurisdiction thereof, who is a citizen of the United States and the State wherein the person resides, whether such person is entitled to a trial by jury pursuant to the VII Amendment of the United States Constitution when:
(a) a violation of the XIV AMENDMENT OF THE UNITED STATES CONSTITUTION (1868) SECTION I is mentioned in the person Complaint when false and inaccurate documents are placed in the person personnel file and the original document of the person 1997 application for the position of Correctional Lieutenant cannot be produced by the Defendants,
(b) the amount in controversy mentioned in the person Complaint is more than twenty dollars,
(c) a trial by Jury is a demand in the person Complaint.

PARTIES TO THE PROCEEDING

1. Petitioner is the Petitioner in the Court of Appeals for the Third Circuit and in the United States District Court for the District of Delaware:
Cristina E. Gory.

2. Defendants are the Defendants in the Court of Appeals for the Third Circuit and in the United States District Court for the District of Delaware:
Lieutenant James Hollis, Captain Joseph H. Belanger, Security Superintendent Barry Hawlk, Manager Dept. Recruitment Roy Lawler, Bureau Chief Paul Haward.

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Opinions Below

The Order Granting Defendant's Motion for Summary Judgement in the United States District Court for the District of Delaware, signed by Judge Roderick R. Mckelvie on January 17, 2001, is attached as Appendix A (reformatted).
The Opinion ruling in favor of the United States District Court Order Granting Defendants' Motion for Summary Judgement in the United States Court of Appeals for the Third Circuit entered by judges Scirica, Barry, and Cowen on 03/08/02, and listed in the GENERAL DOCKET as Not For Publication, Not Procedential Unreported PER CURIAM OPINION, is attached as appendix. B (reformatted).

JURISDICTION

Departure from the accepted and usual course of judicial proceedings Supreme Court Rule 10 (a). Cristina E. Gory, the appellant, was denied the Constitutional right of a trial by jury per the VII Amendment of the United States Constitution.
The following undisputed facts, mentioned in the Appellant Complaint, were overlooked in the United States District Court for the District of Delaware and in the United States Court of Appeals for the Third Circuit:

1. False and inaccurate documents were found in the appellant personnel file intended to foreclose and/or diminish Plaintiff's opportunities for occupational advancement.
2. Defendants cannot produce the original document of appellant 1997 Application for the Correctional Lieutenant position.
3. The Defendants violation the XIV (1868) AMENDMENT OF THE UNITED STATES CONSTITUTION Section I .

The Opinion of the United States Court of Appeals for the Third Circuit was entered on March 08, 2002 by Judges SCIRICA, BARRY, AND COWEN.

This Petition for a Writ of Certiorari is being submitted to this Court within 90 days from the Opinion entered on March 08, 2002 (Supreme Court Rule 13.1 and 13.3).

CONSTITUTIONAL PROVISION AND STATUES
Constitution of the United States

AMENDMENT VII
"In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of a trial by Jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law."(Appendix C attached).
Common law mentioned in Plaintiff's Complaint
AMENDMENT XIV Section 1
"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty , or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."(Appendix D attached).

CONCISE STATEMENT OF THE CASE RAISING THE FEDERAL QUESTION

The following statement was presented to the United States District Court For the District of Delaware and to the United States Court of Appeals for the third Circuit through the Appellant Complaint filed in the

United States District Court for the District of Delaware on September 07, 1999 , the Plaintiff's Initial Disclosure and Explanation of Documents 1-17 dated February 28, 2000, Letter to Plaintiff from Stuart B. Drowos dated July 11, 2000 , Plaintiff's copy of 1997 Application for the Lieutenant position sent to Plaintiff by Stuart B. Drowos on July 11, 2000, Plaintiff's Motion To Compel Pursuant to Rule 37 dated July 18, 2000 (See Appendix E Attached), Plaintiff's response to Motion for Summary Judgement dated November 27, 2000 , Plaintiff's Pretrial Draft Order dated December 18, 2000 (See Appendix F attached), and in the United States Court of Appeals for the Third Circuit through the informal brief/appendix tot. of 46 pages filed on 5/24/01, which includes all of the above listed documents.

The Appellant/Plaintiff filed a Complaint in the United States District Court for the District of Delaware on September 07, 1999. The Complaint involves complex Civil Rights issues including violation of the XIV Amendment (1868) of the United States of America Constitution. The amount in controversy mentioned in the Appellant/Plaintiff's Complaint is a Lieutenant position (currenly paygrade 11) and a fair amount in back pay, and also requested in the Complaint is a trial by Jury.

The action case NO.99 cv 595 rrm in United States District Court for the District of Delaware and NO.01-1291 in United States Court Of Appeals for the Third Circuit, is brought pursuant to Title VII of the Civil Right Act of 1964,as amended, for employment discrimination with respect to Plaintiff's sex and race, violation 29 & 5917 Competitive Examination, violation of Department of Correction Code of Conduct #15 and #13 Reporting, and violation of the XIV AMENDMENT OF THE UNITED STATES CONSTITUTION OF THE UNITED STATES OF AMERICA (1868) Section I. The alleged violation occurred in connection with Plaintiff's employment at the Delaware Correctional Center located in Smyrna Delaware beginning in 1996. The alleged violations in this suit concern: (a) Denial of Plaintiff to compete on a merit basis for the Correctional Lieutenant promotion through testing in 1997 and again in 1998; (b) Plaintiff's personnel file was clearly compromised in 1996 and in 1997 containing false and inaccurate documentation including a negative Performance Review that did not support the allegations and that differ from copy given to Plaintiff signed by Plaintiff's immediate Supervisor, shift Captain, and Security Chief and intended to foreclose and/or diminish Plaintiff's opportunities for occupational advancement;

(c) Defendants have refused to produce the original copy of Plaintiff's 1997 Application for the position of Correctional Lieutenant for review and examination of outstanding discovery when requested in the United States District Court via a motion to Compel dated July 18,2000 Pursuant to Rule 37 (Judge Roderick McKelvie did not grant such motion), and resulting in a violation of Federal Rule 1002 (Requirement of Original). See: Bottcher v. State of Fla.Dept. of Agriculture and Consumer Services, D.C.FLA. 1973, 361 F. SUPP. 1123 affirmed 503 F.2D 1401.

The Plaintiff received a COPY of Plaintiff's 1997 application for the position of Correctional Lieutenant on July 12 , 2000 from Deputy Attorney General Stuart B. Drowos, however: (a) The Standard and visible Stamp present on all applications copies confirming the date on which each application is received in the human resources office is not present and/or not legible on the copy of Plaintiff's 1997 application for the position of Correctional Lieutenant received from Deputy Attorney General Stuart B. Drowos on July 12, 2000;

(b) The Copy of Plaintiff's 1997 application for the position of Correctional Lieutenant received from Deputy Attorney General Stuart B. Drowos on July 12, 2000 IS NOT acceptable as the identical and true copy of the original document.

Related case to this suit is case #95-CV- 252 in the United States District Court for the District of Delaware assigned to Judge Roderick McKelvie, and/or #99-5114 in the United States Court of Appeals for the third Circuit in respect to Correctional Officer Karl Hazzard a black male who was discriminated against by the Department of Correction through publications " The Midnight Rambler" where the words "NIGGERS WITH ATTITUDES" clearly appear and he was later given opportunity to test for the position of Correctional Lieutenant in 1998 while Plaintiff was denied opportunity. Also, copies of the Department of Correction Activity Reports 1997, 1998, 1999 and a copy of the Memorandum-DCC re: Staff Transfers/Promotions dated September 13, 2000 clearly prove that the Delaware Department of Correction is failing or refusing to promote females on the same basis as male Correctinal Officers to positions such as Correctional Lieutenant, Correctional Staff Lieutenant, and Correctional Captain in facilities housing male inmates.
SEE: Firefighters, Local 2069 V. city of Sylacauga, D.C. Ala 1997, 436 F. Supp. 482; United States V. City of Miami, Florida, 664 F2D 435, 441 (5th Cir. 1981); Vulcatoneers, Inc. V. N.J. Dept.of Civil Service, 832 F. 2D. 8H, 814 (3rd Cir. 1987);

United States V. State of Delaware Department of Correction et, al.,C.A. No. 90-34 SLR (D.Del), January, 1990.

On Docked date 11/16/00, in the United States District Court, Defendants filed a Motion for Summary Judgement and a Memorandum of points in support of the Motion for Summary Judgement. Defendants' memorandum of points are not consistent and/or relevant in answering original Complaint via Plaintiff. Memorandum of points lacks factual content which does not support Defendants' motion for summary judgement: (a) Defendants' indicate per memorandum of points, that plaintiff had alleged that she was discriminated against on the basis of sex and race because the candidate chosen for the position is an African-American male. Point indicated via Defendants is false. It is the position of the Plaintiff that Officer Karl Hazzard deserved promotion to Correctional Lieutenant as Officer Karl Hazzard was clearly discriminated against by the Department of Correction in publications "The Midnight Rambler"(case #99-CV-252); (b) As per posting via the Office of Human Resources & Development, the minimun qualifications for the Lieutenant position are as follows: An Associates's degree in Criminal Justice, Psychology, Sociology or related areas or at least two years experience in a security related field, e.g., correction, law enforcement, public safety, etc., which includes supervisory responsibilities.

Point #6 submitted via Defendants' has been modified to include, "which includes supervisory responsibilities for fellow employees or staff"; (c) Point #8 Submitted via Defendants', paragrafh as follows: "In order to establish the third prong of her prima facie case, the Plaintiff must demostrate that the black male candidate who secured the position had qualifications either equal to or less than Plaintiff's qualifications. The Plaintiff is unable to demostrate this as her qualifications were not equal, but in fact less, than the candidate who was eventually chosen". Again, Plaintiff would claim submission is not relevant to Complaint. Plaintiff claims that both Officer Karl Hazzard and Plaintiff were qualified for testing in accordance with minimun qualifications set forth via the Office of Human Resources & Development. Plaintiff' was discriminated against by denying testing in 1997 and in 1998. If the Plaintiff was truly not qualified for the testing of the Correctional Lieutenant Position why were false and inaccurate documents placed in Plaintiff's Personnel file including an inaccurate 1996 Evaluation Performance Review, and why the original document of Plaintiff's 1997 Application for the Correctional Lieutenant position can not be produce by Defendants?; (d) Defendants' Exhibit "A" (Affidavit of Alan Machtinger, Director of Human Resources), further demostrates support of Plaintiff's Complaint .

Alan Machtinger mentions a "closer inspection", of Plaintiff's 1996 Application for the position of Correctional Lieutenant. Why was a "closer inspection" of Plaintiff's 1996 Application for the position of Correctional Lieutenant initiated ?, Was the "closer inspection" conducted before or after Plaintiff tested for the position of Correctional Lieutenant in 1996 ?, Why are comments via rater on Plaintiff's 1996 Application "lacks supervisory responsibilities", marked through as to negate comments?.

A trial by Jury to address and conclude Plaintiff's Complaint within the United States District Court for the District of Delaware was again requested in Plaintiff's Response to Motion for Summary Judgement dated November 27, 2000.

On January 17, 2001 in the United States District Court Judge Roderick McKelvie entered an Order Granting Defendants' Motion for Summary Judgment.

On January 25,2001 in the United States District Court, Plaintiff filed a Notice of Appeal to the U.S. Court of Appeals for the Third Circuit. In the Court of Appeals through the informal brief and appendinx tot. of 46 pages filed on 5/24/01, the Plaintiff requested a Lieutenant position currently paygrade 11,

and a reasonable/fair amount in back pay, or, this case should be remand to the District Court with an order of a Jury Trial as the Plaintiff's right by law pursuant to the VII Amendament of the United States Constitution,.in regard to the Defendants violation of the XIV Amendament of the United States Constitution Section I which was disregarded and not mentioned in the Order Granting Defendant's Motion for Summary Judgement signed by Judge Roderick McKelvie.

In the United States Court of Appeals for the Third Circuit, on March 8, 2002 the Opinion of the Court was filed by Circuit Judges SCIRICA, BARRY and COWEN Unreported-Not Precedential and founding no error, and affirming the District Court Order Granting Defendant's Motion for Summary Judgment signed by Judge Roderick McKelvie.
Defendants violation of the XIV Amendment of the United States Constitution Section I was again disregarded and not mentioned by Judges SCIRICA, BARRY and COWEN as if false and inaccurate documents had not been placed in Plaintiff's personnel file , and/or as if it is the Defendants right to diminish and foreclose Plaintiff's opportunities for occupational advancement through false and inaccurate documents, and/or as if Plaintiff has no Constitutional rights at all.

REASONS FOR GRANTING THE FEDERAL QUESTION ARE SUBSTANTIAL

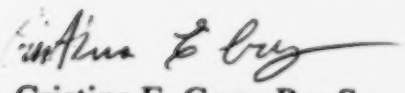
Plaintiff's opportunities for employment advancement were diminished in denying testing in 1997, and 1998 to include those opportunities to be relevant to all Correctional facilities located in Kent and New Castle County. Submission of inaccurate Performance Review and documents into Plaintiff's Personnel file that do not support the allegations and differ from copy given to Plaintiff, signed by Plaintiff's immediate Supervisor, Captain, and Security Chief was intended to foreclose and/or diminish Plaintiff's opportunities for occupational advancement which constitutes a threat to a property interest to which the protection of due process applies (XIV Amendment (1868) of the United States Constitution Section I).
The United States District Court For the District of Delaware and the United States Court of Appeals for the Third Circuit disregard the violation of the XIV Amendament of the United States Constitution Section I , which is the core of the act of discrimination in this case, and denied the Plaintiff of a trial by jury violating the VII Amendament of the United States Constitutuion and departing from the accepted and usual course of judicial proceedings.

CONCLUSION

The Petition for a Writ of Certiorari should be granted

Dated: May 7, 2002

Respectfully submitted



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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

CRISTINA E. GORY,
Plaintiff,

C.A. No.99-595 RRM

v.

STATE OF DELAWARE,
DEPT. OF CORRECTION,
JAMES HOLLIS, JOSEPH
BELANGER, ROY LAWLER
BARRY HAWLK and
PAUL HAWARD
Defendants

ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

This is an employment discrimination case, Plaintiff's, Christina E. Gory, a pro se litigant, is a citizen of Delaware. Defendant, Delaware Department of Correction ("DOC") is an agency of the state of Delaware. Individual defendants,Lieutenant James Hollis, Captain Joseph Belanger, Recruitment Manager Roy Lawler, Securitry Superintendent Barry Hawlk and Bureau Chief Paul Howard are employees of the DOC.

Plaintiff filed this action on September 7, 1999, pursuant to Title VII of the Civil Rights Act of 1964,

42 U.S.C. & 2000e et seq.; 42 U.S.C. & 1981, alleging that the defendants wrongfully discriminated against her by not permitting her to take an exam that, if passed, would have qualified her for a promotion. She also claimed that defendants' same action violated a Consent Decree issued pursuant to United States v. Delaware, C.A. No. 90-34-SLR, (October 17, 1994) and 29 dEL. c. & 5917, which addresses competitive exams. Based upon plaintiff's complaint, on November 16, 2000, defendants moved for summary judgment pursuant to Federal Rule of Civil Procedure 56(c), enclosing a supporting memorandum. On November 27, 2000, plaintiff filed her response to defendants' motion for summary judgment. On December 13, 2000, defendants filed a reply brief in support of their motion for summary judgment. This is the court's opinion on the motion.

1. FACTUAL BACKGROUND

The court draws the following facts from the complaint, affidavits filed by defendant and the undisputed facts contained in the summary judgment motion, answer and reply. In March 1998, plaintiff applied for the position of Correctional Lieutenant. She was then employed as a Corrections Offiicer. In order to became a Correctional Lieutenant each candidate must demonstrate that he or she meets either of the following minimum qualifications: an Associate's degree in Criminal Justice, Psychology, Sociology or related area or at least two year's experience in a security related field, which included supervisory responsibilities. If the candidate meets either

qualification, he or she must pass a written exam to become a Correctional Lieutenant.

At the end of March 1998, defendants rejected plaintiff's application to take the written exam because of a lack of supervisory responsibilities. Plaintiff does not possess an Associate's degree and, thus, could only qualify under the alternative supervisory requirement. Plaintiff contends that she possessed the requisite supervisory experience because, according to her 1998 application, she had "six years experience in corrections, which include[d] supervisory responsibilities of inmates." Defendants conted that supervisory requirement can only be satisfied through supervisory experience of fellow employees and staff.

Plaintiff obtained a Notice of Right to Sue from the EEOC on June 9, 1999. Plaintiff filed a complaint in this court on September 7, 1999, setting forth three claims. Claim one asserts that defendants violated Title VII by not permitting her to take the written exam due to her race and sex. Claim two asserts that defendants violated the Consent Decree issued pursuant to United States v. Delaware, C.A. No. 90-34-SLR, (October 17, 1994) by not permitting her to take the written examination. Claim three avers that defendants violated 29 Del. C. & 5917 by denying her access to the competitive exam for Correctional Lieutenant.

II. Discussion

A. Defendant's Motion for Summary Judgment

1. Title VII

Defendants argue that the court should grant summary judgment on the Title VII claim because plaintiff has failed to establish a prima facie case. Summary judgment is proper "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is not genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). An issue is "genuine" only if the evidence is such that a reasonable jury could return a verdict for the nonmoving party. See Anderson v. Liberty Lobby,Inc., 477 U.S. 242 (1986). Title VII prohibits an employer from engaging in race or gender discrimination against an employee. To establish a prima facie case of discrimination the plaintiff must demostrate that she was: (I) a member of the protected class, (2) qualified for the position she sought, and (3) nonmembers of the protected class were treated more favorably. See Ezold v. Wolf, Block, Schorr and Solis-Cohen, 983 F.2d 509, 522 (3d Cir. 1993).

Defendants conted that the court should grant summary judgment on the Plaintiff's Title VII claim because she is unable to establish the second element, that she was qualified for the position. To qualified for the position of Correctional Lieutenant, each

candidate must meet either the educational or supervisory requirement. Defendants contend that plaintiff did not demostrate that she met either qualification and, accordingly, was not qualified to take the exam.

Plaintiff does not possess an Associate's Degree and, thus, does not meet the educational requirement. Noonetheless, plaintiff contends that she possessed the alternative qualification of supervisory responsibilities. Plaintiff contends that supervision of inmates in her capacity as a Correctional Officer fulfill[illegible] this requirement. Defendants argue that supervisory responswibilities means that the candidate must have supervised fellow employees or staff.

Although the application only states that the candidate must possess "supervisory responsibilities," no reasonable jury could conclude that requirement is satisfied by supervision of inmates only. First, Correctional Lieutenants are responsible for the supervision and evaluation of other correctional employees and such experience would logically be required. Second, it is standard that each Corrections Officer that applies for the position will possess supervisory responsibilities over inmates already and, thus, it would be inconsistent to request candidates to disclose their supervisory experience if supervision over inmates,solely, was adequate. Finally, the U.S. Department of Justice ("DOJ") letter,in response

to plaintiff's written request that the DOJ inquire into whether the Consent Decree was violated, states in reference to the Correctional Lieutenant job that "supervisory experience over other workers or colleagues is a standard requirement for this type of supervisory position in other correctional facilities nationwide." Thus, no reasonable juror could conclude that the requisite "supervisory responsibilities" could be satisfied by supervision of inmates only and, thus, plaintiff has failed to demostrate that she was qualified for the position of Correctional Lieutenant. Therefore, plaintiff has failed to establish a prima facie Title VII violation and, accordingly, summary judgment is appropriate.

2. Consent Decree

The Consent Decree, issued pursuant to United States v. Delaware, C.A. No. 90-34-SLR, (October 17, 1994), mandates the DOC to place female employees in male correctional facilities. Novertheless, the decree does not "oblige [the DOC] to... hire, transfer or promote any person who does not meet the minimum qualifications for the relevant position." Plaintiff does not meet either the educational or supervisory requirements of the Correctional Lieutenant position. Thus, the Consent Decree has not been violated.

3. Competitive Exams 29 Del.C. &5917

The Delaware Code, 29 Del. C. & 5917 defines the parameters of open competitive exams for public employment positions. Plaintiff contends that her access to the written exam for Correctional Lieutenant was limited, thus violating & 5917. Nevertheless, when read in conjunction with && 5918, 5919, 5920 and 8914, it is apparent that the decision makers still have the authority to reject an applicant for failure to meet the minimum qualifications. Section 8914 states that "the application by any person seeking employment in the Department [of Correction] shall be rejected if it indicates, on its face, that the applicant does not meet the minimum qualifications for the position sought." Here, the plaintiff did not meet the educational or supervisory qualifications. Thus, summary judgment on this claim is appropiate.

III. CONCLUSION

For the reasons set forth above,

IT IS HEREBY ORDERED as follows,

1. Defendants' Motion for Summary Judgment (D.I. 38) is granted.
2. The Clerk of the Court shall enter judgment pursuant to Federal Rule of Civil Procedure 58 in favor of defendants and against plaintiff on all counts in the plaintiff's complaint.

"s_____".
Roderick R. McKelvie
UNITED STATES DISTRICT JUDGE

Dated: January 17,2001

UNREPORTED-NOT PRECEDENTIAL
UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 01-1291

CRISTINA E. GORY
Appellant

v.

STATE OF DELAWARE;
STATE OF DELAWARE DEPARTMENT OF CORRECTIONS;
JAMES HOLLIS, Lt.; JOSEPH BELANGER,Capt.; BARRY HAWLK, Security Supt.; ROY LAWLER, Manager Dept. Recr; PAUL HAWARD, Bureau Chief

On Appeal from the United States District Court for the District of Delaware D.C. Civil Action No.99-cv-595 (Honorable Roderick R. McKelvie)

Submitted Pursuant to Third Circuit LAR 34.1(a)
March 4, 2002

Before: SCIRICA, BARRY and COWEN, Circuit Judges

(Filed: March 8, 2002)

OPINION OF THE COURT

PER CURIAM

Cristina E. Gory ("Gory") appeals the District Court's summary judgment ruling in favor of the State of Delaware, Department of Correction ("DOC"), and its employees, James Hollis, Joseph Belanger, Barry Hawlk, Roy Lawler and Paul Haward (collectively, "defendants"). Gory asserts claims under Title VII of the Civil Rights Act of 1964 ("Title VII"), as amended, 42 U.S.C. & 2000e et seq., the Consent Decree issued pursuant to United States v. Delaware, C.A. No. 90-34-SLR, (Octiber 17, 1994) and 29 Del. C. & 5917. Because this is an appeal from the District Court's grant of summary judgment, we exercise plenary review. Equimark Commercial Fin. Co. v. C.I.T. Fin. Servs. Corp., 812 F.2d 141 (3d Cir. 1987).

Gory was employed as a Correctional Officer by DOC from December 1990 until September 1993, when she resigned to pursue other carrer opportunities. Gory was rehired by DOC as a Correctional Officer in September 1995 and was assigned to the Delaware Correctional Center ("DCC"). In 1997, and again in 1998, the position of Correctional Lieutenant was posted by DOC. As stated in the posting, the minimum qualifications for the position were: " An Associate's degree in Criminal Justice, Psychology, Sociology or related areas or at least two year's experience in a

security related field, e.g., corrections, law enforcement, public safety, etc., which includes supervisory responsibilities." (Emphasis in original). Applicants meeting the minimum qualifications were then permitted to take a written examination, for which a score of 60.0 or greater was required.

Gory filed applications for this position in both 1997 and 1998.1 On both occasions, Gory's application was rejected because she failed to meet the minimum requirements. Gory does not possess an Associate's Degree. However, in her application Gory stated that she possessed the requisite supervisory experience bacause she had "six years experience in corrections, which include[d] supervisory responsibility of inmates."

In 1998, following the rejection of her second application, Gory filed a complaint with the Equal Employment Opportunity Commission ("EEOC"). in addiition, Gory corresponded with the Civil Rights Division of the Department of Justice.

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1 Gory had applied for the same position in 1996. Apparently due to an administrative error, Gory was deemed to possess the minimum qualifications for the position, and was permitted to take the written examination. However, Gory scored 57.0 on the written examination, failing to achieve the minimum passing score. Accordingly, she was not promoted to the position of Correctional Lieutenant.

After investigation and review, both agencies were unable to conclude that DOC acted illegally when it declined to promote Gory to the position of Correctional Lieutenant. On June 9, 1999, the EEOC issued Gory a right to sue letter in connection with her charge. Gory then filed this action in the District Court on September 7, 1999. The District Court granted summary judgment in favor of the defendants on January 18, 2001.

On appeal, Gory reiterates the factual allegations presented to the District Court, and fails to present any legal arguments which undermine the District Court's conclusions with which we agree. Accordingly, we agree with the District Court that the defendants were entitled to judgment as a matter of law, and accordingly, we affirm.

Under the burden-shifting analysis articulated by the Supreme Court in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973), an employee must first establish a prima facie case of discrimination by demostrating that: (1) she was a member of the protected class, (2) she was qualified for the position she sought, and (3) non-members of the protected class were treated more favorably. See Goosby v. Johnson & Johnson Medical, Inc., 228 F.3d 313, 318-19 (3d Cir. 2000). Once the employee establishes her prima facie case, the burden of production shifts to the employer to articulate a legitimate, non-discriminatory reason for its actions. See St. Mary's Honor Center v. Hicks, 509 U.S. 502, 507 (1993).

If the employer articulates a legitimate, non-discriminatory reason for the adverse employment action, the presumption of discrimination drops from the case. See Hampton v. Borough of Tinton Falls Police Dep't, 98 F.3d 107, 112-13 (3d Cir. 1996). The employee then bears the burden of persuading the fact finder that employer's articulated reason is merely pretext for discrimination. See id. Here, the District Court properly concluded that Gory was unable to establish the second element of her prima facie case. Summary judgment is appropiate when there is no genuine issue of material fact and the moving party is entitled to a judgment as a matter of law. See Fed. R. App. Pro. 56(c). There is a "genuine issue of material fact" if the evidence is such that a reasonable jury could return a verdict for the non-moving party.See Anderson v. Liberty Lobby,Inc.,, 477 U.S. 242, 248 (1986).

Gory argues that she met the minimum requirements for the position of Correctional Lieutenant because she had sufficient supervisory experience due to "six years experience in corrections, which include[d] supervisory responsibility of inmates." (Emphasis added). The defendants argues that the "supervisory responsibilities" requirement refers to supervision of fellow employees or staff. Although the job posting stated only that a candidate possess " supervisory responsibilities," no reasonable jury could conclude that the requirement was satisfied by the supervision of inmates only.

As the District Court explained, all Correctional Officers "supervise" inmates because guarding inmates is a major part of their job. Thus, it would be unncessary for DOC to request candidates to disclose their supervisory experience if supervision over inmates was adequate. Moreover, because Correctional Lieutenants are responsible for the supervision and evaluation of other correctional employees, such experience would logically be required. Because no reasonable jury could conclude that Gory satisfied the "supervisory responsibilities" requirement of the job posting, Gory was not qualified for the position she sought, and the District Court properly granted summary judgment for defendants on the Title VII claim.

The Consent Decree at issue here mandates that the Delaware DOC consider females for employment positions within DOC on a "non-discriminatory basis." United States v. Delaware, C.A. No. 90-34-SLR (October 17, 1994). Gory argues that the defendants violated the Consent Decree when they refused to allow her to take the written examination for the position of Correctional Lieutenant. The Consent Decree, however, specifically provides that it "does not obligate [DOC] to hire unnecessary personnel, or to hire, transfer or promote any person who does not meet the minimum qualifications for the relevant position." Id. at 3. As previously discussed, Gory did not meet the minimum qualifications for the position of Correctional Lieutenant.

Accordingly, the District Court properly granted summary judgment on this issue.

Chapter 29, & 5901, et. seq. of the Delaware Code establishes "a system of personnel administration based on merit principles and scientific methods" for specified State employees. Gory argues that by declining to permit her to take the written examination for Correctional Lieutenant, the defendants violated 29 Del. C. & 5917. Section 5917 provides for "open competitive examinations to test the relative fitness of applicants for positions in the classified service." 29 Del. C. & 5917. Contrary to Gory's argument, however, this statutory provision cannot be read in isolation, but must be read in conjunction with other statutory provisions. Specifically, 29 Del. C. & 8914 provides that "the application by any person seeking employment in the Department [of Corrections] shall be rejected if it indicates, on its face, that the applicant does not meet the minimum qualifications for the position sought." As previously discussed, on the face of her application, Gory did not meet the minimum qualifications for the position of Correctional Lieutenant. Accordingly, the District Court correctly concluded that the defendants did not violate & 5917 when they declined to permit Gory to take the Correctional Lieutenant's examination.

Having found no error, we will affirm for the reasons herein and by the District Court.

EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

Amendment I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Amendment II

A well regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed.

Amendment III

No soldier shall, in time of peace be quartered in any house, without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

Amendment IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compenssation.

Amendment VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

Amendment VII

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any court of the United States, than according to the rules of the common law.

Amendment VIII

Amendment XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the executive and judicial officers of a state, or the members of the legislature thereof, is denied to any of the male inhabitants of such state, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such state.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any state, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any state legislature, or as an executive or judicial officer of any state, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any state shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

- Next Amendment--Previous Amendment
- Table of Articles and Amendments
- Overview of Full Constitution

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July 18, 2000

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

CRISTINA E. GORY

Plaintiff

V.

STATE OF DELAWARE
DEPARTMENT OF CORRECTIONS

Defendants

NO. 99-

FILED
Jul 18 9:06 AM '00
U.S. DISTRICT COURT
DISTRICT OF DELAWARE

MOTION TO COMPEL PURSUANT TO RULE 37

The Plaintiff moves this Court pursuant to the Superior Court Rule 37 for an order compelling the Defendants to Produce the ORIGINAL document of Plaintiff's 1997 application for the position of Correctional Lieutenant for examination of outstanding discovery. In support of this motion the Plaintiff states as follows:

1. The Plaintiff received a COPY of Plaintiff's 1997 application for the position of Correctional Lieutenant on July 12, 2000 from Deputy Attorney General Stuart B. Drowos.

2. The Standard and visible Stamp present on all applications and present on all applications copies confirming THE DATE on which each application is received in the HUMAN RESOURCES office IS NOT present and/or not legible on the COPY of Plaintiff's 1997 application for the position of Correctional Lieutenant received from Deputy Attorney General Stuart B. Drowos on July 12, 2000.

3. The COPY of Plaintiff's 1997 application for the position of Correctional Lieutenant received from Deputy Attorney General Stuart B. Drowos on July 12, 2000 IS NOT acceptable as the identical copy of the original document.

The Plaintiff prays that the Court enter an order compelling the Defendants to Produce the Outstanding Discovery.

Cristina E. Gory

CRISTINA E. GORY, Pro Se
105 Orchard Ave.
Felton, DE 19943

The State of Delaware
Employment Application

For Personnel Use Only
MQ's ☐Yes ☐No
Comments: 4 yrs
2 years supervisory
VP
Date 4/18/00

Social Security #	Last Name	First Name	Middle Initial
221-62-7425	Gory	CRISTINA	E.

FILED
2000 APR 18 PM 03:09
U.S. DISTRICT COURT
DISTRICT OF DELAWARE
CLERK

Mailing Address, City, State & Zip
105 Orchard Av. Felton De. 19943

County
Kent

May we call you at work? ☑ Yes ☐ No
Home Phone: (Area Code) (302) 284 4612
Driver License (State): Delaware
Work Phone: (Area Code) (302) 653 9241
Type Class D #0996248
Expiration Date 06/26/99

Position applied for: (Job Title) Correctional - Lieutenant

Agency Dep. of Correction
Posting # 99 - C21

Job location(s) applied for: ☑ New Castle ☑ Kent ☐ Sussex ☐ City of Wilmington
Check the type of job you will accept: ☑ Permanent ☐ Temporary ☑ Full Time ☐ Part Time

Education/Training: ☑ High School Graduate/GED ☐ Vocational/Business School

☐ Associates Degree ☐ B.S. or B.A. Degree ☐ Masters ☐ Other (Specify)

Name & Location of College/University	Dates Attended	Major/Minor
Terry Campus - Del. Tech. Dover - Delaware	1991 1992 1994	Nursing - L.P.N.

Occupational Licenses: Issued by # Expiration Date

Certificates (Types):

Language(s) other than English Italiano ☑ Speak ☐ Read ☑ Write

Certification

Before signing, please read the following statement carefully:

Any false or substantive omission of information may be cause for rejection, or dismissal if employed by the State. I authorize the release of any information from previous employers or references.

I understand that if I am hired by the State of Delaware, the State shall require verification of identity and eligibility for employment in the United States.

I certify that if I am male, born after January 1, 1960, I have registered for Selective Service if required to register. I understand that I may be required to document registration.

If you are claiming preference as a Veteran or as the unremarried widow or widower of a deceased Veteran, attach a copy of your DD 214 form. If you are also claiming preference as a disabled veteran or unremarried widow or widower of a deceased disabled veteran, include your VA disability letter and claim number.

Have you ever been convicted of a felony or Class A Misdemeanor? ☐ Yes ☑ No If yes, identify type of offense, date and location.

Present State of Delaware employee?	☑ Yes	☐ No	☐ Merit	☐ Other
Past State of Delaware employee?	☑ Yes	☐ No	☐ Merit	☐ Other

A security clearance will be based on agency requirements.

Applicant Signature	Date
Christine E Ray	04/24/1997

Please Note: Accommodations are available for applicants with disabilities in all phases of the application and employment process. Please call (302) 739-5458 to request an auxiliary aid or service. TDD users should call the Delaware Relay Service Number 1-800-232-5460 for assistance.

Please return to the agency shown on job announcement/advertisement by the closing date.

State Personnel Office
Leadership and Service for a Quality Workforce

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The Employee Relations Center

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DECEMBER 19, 2000

FILED

Dec 19 11 28 AM '00

U.S. DISTRICT COURT
DISTRICT OF DELAWARE

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

CRISTINA E. GORY

PLAINTIFF

V.

NO. 99 595 mm

STATE OF DELAWARE
DEPARTMENT OF CORRECTIONS

DEPENDANTS

PRETRIAL DRAFT ORDER

Plaintiff began employment with the Department of Correction on December 05, 1990 as a Correctional Officer. In/around the end of September of 1993 ,Plaintiff voluntarily resigned. On September 05, 1995, Plaintiff was rehired by respondent as a Correctional Officer. In 1996 the Human Resources and Development Department Manager, Roy Lawler, determined that Plaintiff was qualified to take the Lieutenant test (See document #4). On November 18, 1996, Plaintiff received notice from the Department that the Plaintiff's test score for Correctional Lieutenant was 57.0 and that the passing score was 60.0 (See document #5). On December 19, 1996, (one month after receiving test score) the Plaintiff was presented with a less then desirable Employment Performance Review containing false and inaccurate documentation . The Performance Review was signed via Lt. James Hollis. The Plaintiff refused to signed document in accordance with the DCOA contractual agreement (See document #6). A copy of the Employment Performance Review dated December 19, 1996 which differed from the copy given to Plaintiff was later discovered inside Plaintiff's Personnel file with signatures via Lt. James Hollis, Capt. Joseph H. Belanger, and Security Superintendent Barry Hawik (See document #7). On January 20, 1997, Plaintiff sent letter to Deputy Warden Thomas C. Gulledge (See document #8). Complaint relevant to Performance Review.

1) Plaintiff was reporting staff member procedure violations including gender discrimination re: conduct toward female correctional staff. 2) Plaintiff adhering to Departmental policies in report writing. (See documents #1, #2, #3)
As a result of a Step One Grievance on February 19, 1997, Deputy Warden Thomas C. Gulledge's decision in favor of grievant. Performance review rating required change as documents did not support the allegations and performance review did not adhere to the appropriate protocol for chain-of-review. (See document #9)
Decision via Deputy Warden Thomas Gulledge was ignored via Lt. James Hollis, Capt. Joseph H. Belanger and Security Superintendent Barry Hawik.
On April 03, 1997 Step II grievance with Bureau Chief Paul Howard, Security Superintendent Barry Hawik and union representative J.R. Morris as decision and/or directive via Deputy Warden Thomas Gulledge had been ignored.(Negative performance review forwarded to plaintiff's personnel file despite decision)
Bureau Chief Paul Howard physically removed negative performance review from Plaintiff's personnel file with the agreement that Security Chief Barry Hawik would have an evaluation performed in accordance with decision via Deputy Warden Thomas Gulledge. (See document #10)
On June 11, 1997 and on April 01, 1998 the Plaintiff was informed via the Human Resources and Development Office, that, the Plaintiff no longer was qualified to take the Correctional Lieutenant exam, although the qualifications for the position had not changed. (See documents #13, #14, #15) On September 16, 1998, effective date, Correctional Officer Karl Hazzard, a black male, was promoted to Correctional Lieutenant. Officer Karl Hazzard and Plaintiff were both Correctional Officers at the Delaware Correctional Center in 1998. Officer Karl Hazzard was given opportunity to test for a lieutenant position while plaintiff had been denied. (See application via Officer Karl Hazzard document #16, and, Plaintiff's copies applications for testing lieutenant position documents #4, #17, copy of 1997 Plaintiff application for lieutenant testing sent to Plaintiff via Defendants on July 11, 2000 after Plaintiff's Motion to Compel dated June 26, 2000. Also see Plaintiff's Motion to Compel dated July 18, 2000 concerning 1997 copy of Plaintiff's application, and letter dated July 18, 2000 from Deputy Attorney General Stuart B. Drowos)
Also see: Per Defendants response to Plaintiff's first set of Interrogatories dated June 21, 2000, after Plaintiff's Motion to Compel Pursuant Rule #37 dated April 24, 2000 RE: Application review, applicants personnel file is not reviewed; no one at the Human Resources office contacts anyone at the applicants work site to determine the applicant's qualifications for a position for which the applicant has applied; a member of the recruitment and selection unit reviews the applications and determines whether or not each applicant meets the minimum qualifications based SOLELY upon the information provided by each applicant on the application. Per Defendants response, the Office of Human Resources is aware that it is an accepted practice at the Delaware Correctional Center to permit Correctional staff to work outside of their classification ie; Correctional Officer assigned to Correctional Corporal and/or Correctional Sergeant positions pursuant to the State's Merit Rule 3.0410 (See documents #11, #12), and, per Defendants response the rank or position of Correctional Corporal and/or Correctional Sergeant DOES NOT qualify one through application for testing of lieutenant.

Civil Action NO 99 595 rrm (See document file):
Taking in consideration of all documents (Documents #1 through #17), Plaintiff's Motion to Compel Pursuant Rule 37 dated April 24, 2000; Plaintiff's Motion to Compel Pursuant Rule 37 dated June 26, 2000; Defendants response to Plaintiff's First Set of Interrogatories dated June 21, 2000; Defendants response to Plaintiff's first request for Production dated June 21, 2000; Plaintiff's Motion to Compel Pursuant Rule 37 dated July 18, 2000 with attached letter received from Deputy Attorney General Stuart B. Drowos dated July 11, 2000 with attached copy of Plaintiff 1997 application for Correctional Lieutenant testing (The copy of Plaintiff's 1997 application for the position of Correctional Lieutenant received from Deputy Attorney General Stuart B. Drowos on July 12, 2000 IS NOT acceptable as the identical copy of the original document); Plaintiff's response to Defendants first request for Production dated July 26, 2000 with Civil Docked for case #95-CV-252 and copy of the Midnight Rambler related to Civil Case #95-CV-252 copies; Plaintiff's response to Defendants First Set of Interrogatories dated July 26, 2000; letter from Deputy Attorney General Stuart B. Drowos dated July 27, 2000; copy of Plaintiff's complaint under Title VII of the CIVIL RIGHTS ACT OF 1964 filed September 07, 1999; copy of 29&5917 Competitive Examinations; copy of Code of Conduct 13; Delaware Code 19 & 711 Unlawful Employment Practices; Employer Practice 29 & 5927 Performance Records; Amendment XIV-(1868) Section I; Civil Action No. 90-34-SLR 1990 ; Activity Report for the years 1997, 1998, 1999 (Activity Reports were not supplied via Defendants as requested via Plaintiff and only discovered to exist within the DCOA office in September of 2000), and copy of Memorandum-DCC re: Staff Transfers/Promotions dated September 13, 2000 relative to Civil Action NO. 99 595 rrm to this court (27 Promotions to Correctional Corporal, Correctional Sergeant, Correctional Lieutenant Correctional Staff Lieutenant and only one female Correctional Officer was promoted to Correctional Corporal).

Plaintiff will prove that Defendants discriminated against Plaintiff in 1997 and 1998. Correctional Officer Karl Hazzard was permitted to test for Lieutenant in 1998 per application whereas the Plaintiff was denied opportunity. Plaintiff and Officer Karl Hazzard were both qualified for the testing via application in accordance with requirements set forth via the Department of Human Resources and the Department of Correction , Plaintiff and Officer Karl Hazzard had more than two years experience in a security correctional field which includes supervisory responsibilities. Plaintiffs' opportunity for employment advancement were diminished in denying testing to include those opportunities to be relevant at all Correctional facilities located in Kent and New Castle County.
The Delaware Department of Correction is failing or refusing to promote females on the same basis as males Correctional Officer to positions such as Correctional Lieutenant, Correctional Staff Lieutenant, and Correctional Captain in facilities housing male inmates.
Defendants are in violation of the XIV Amendment (1868) of the United States of America Section I , as submission of inaccurate Performance Review and documents into Plaintiff's Personnel file do not support the allegations and differ from copy given to Plaintiff, signed by Plaintiff 's immediate Supervisor, and Captain , and Security Chief

was intended to foreclose and/or diminish Plaintiff's opportunities for occupational advancement which constitutes a Threat to a property interest to which the protection of due process applies. Although Performance Review was removed from Plaintiff 's personnel file, the intention to diminish Plaintiff's employment opportunities remains evident.

Plaintiff will request as relief, a Lieutenant 's position (currently paygrade 11) and a fair amount in "back pay". Plaintiff will Subpoena Lieutenant Karl Hazzard as Plaintiff feels testimony relevant to Civil Action. Plaintiff will Subpoena the original document of Plaintiff's 1997 application for Correctional Lieutenant.
Plaintiff will prepare notebooks of all documents listed in this Pretrial Draft Order and listed in the Civil Action NO 99 595 rrm Plaintiff Complaint filed September 07, 1999 as key-exhibits for the jurors.

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105 Orchard Ave.
Felton, DE 19943
(302) 284- 4612